

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

UNITED STATES OF AMERICA            )  
  )  
          vs.                            )  
  )  
AARON BANKS DIXON,                 )  
  )  
                          Defendant.   )  
\_\_\_\_\_

DOCKET NO. 5:17-CR-55

TRANSCRIPT OF PLEA AND RULE 11 HEARING  
BEFORE THE HONORABLE DAVID S. CAYER  
UNITED STATES MAGISTRATE JUDGE  
APRIL 10, 2019

APPEARANCES:

On Behalf of the Government:

CORTNEY S. RANDALL, ESQ.  
United States Attorney's Office  
227 West Trade Street, Suite 1700  
Charlotte, North Carolina

On Behalf of the Defendant:

ANTHONY MARTINEZ, ESQ.  
RAHWA GEBRE-EGZIABHER, ESQ.  
Federal Public Defender's Office  
129 West Trade Street, Suite 300  
Charlotte, North Carolina

Digitally recorded proceedings transcribed by:

Cheryl A. Nuccio, RMR-CRR  
Official Court Reporter  
United States District Court  
Charlotte, North Carolina

P R O C E E D I N G S

(Transcript of proceedings digitally recorded on  
April 10, 2019.)

THE COURT: Counsel ready to proceed?

MR. MARTINEZ: Yes, Your Honor.

THE COURT: Mr. Dixon, I'll be asking you some  
questions about your plea. The clerk will place you under  
oath first.

(Defendant sworn.)

THE COURT: Sir, do you understand that you're now  
under oath and that you're required to give truthful answers  
to the questions I'm about to ask?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you give false  
information under oath, you may be prosecuted for perjury or  
false statements?

THE DEFENDANT: Yes, Your Honor.

THE COURT: After consulting with your attorneys, do  
you want the Court to accept your guilty plea to one count in  
this bill of indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that you have the  
right to have a United States district judge conduct this  
proceeding?

THE DEFENDANT: Yes, Your Honor.

1           THE COURT: Recognizing your right to proceed before  
2 a district judge, do you expressly consent to proceed in this  
3 court today, that is, before a United States magistrate judge?

4           THE DEFENDANT: Yes, Your Honor.

5           THE COURT: Are you now under the influence of any  
6 alcohol or drugs?

7           THE DEFENDANT: No, Your Honor.

8           THE COURT: Is your mind clear and do you understand  
9 that you're here to enter a guilty plea in your case?

10          THE DEFENDANT: Yes, Your Honor.

11          THE COURT: Have you received a copy of the  
12 indictment and have you discussed its contents with your  
13 attorneys?

14          THE DEFENDANT: I have.

15          THE COURT: Would the government summarize the  
16 charge and the penalty.

17          MS. RANDALL: Yes, Your Honor. The defendant is  
18 entering a plea to Count Three in the superseding bill of  
19 indictment.

20                It alleges that between on or about May 2012 through  
21 on or about March of 2013, in Ashe County, the defendant did  
22 employ, use, persuade, induce, entice, and coerce a minor,  
23 specifically victim 1, to engage in sexually explicit conduct  
24 for the purpose of transmitting any live visual depiction of  
25 such conduct, knowing and having reason to know that such

1 visual depiction would be transmitted using any means and  
2 facility of interstate and foreign commerce, and using  
3 materials that have been mailed, shipped, and transported in  
4 and affecting interstate and foreign commerce, and the visual  
5 depiction was transmitted using any means and facility of  
6 interstate and foreign commerce.

7 That is in violation of Title 18, United States  
8 Code, Section 2251.

9 It carries a mandatory minimum of 15 years, a  
10 maximum of 30 years, a \$250,000 fine, or both, and up to  
11 lifetime on supervised release.

12 THE COURT: Do you fully understand the charge  
13 against you, including the maximum and minimum penalties you  
14 face if convicted?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that by pleading  
17 guilty to a felony charge, you may be deprived of certain  
18 civil rights such as the right to vote, hold public office,  
19 serve on a jury, or possess a firearm?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you spoken with your attorneys  
22 about how the U.S. Sentencing Guidelines might apply to your  
23 case?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that the district

1 judge will not be able to determine the applicable sentencing  
2 guideline range until after your presentence report has been  
3 prepared and you've had an opportunity to comment on it?

4 MR. MARTINEZ: Your Honor, just to clarify, I  
5 believe this is a binding plea.

6 THE COURT: All right. Well, that doesn't apply  
7 then.

8 But there will still be a guideline determination,  
9 won't there?

10 MR. MARTINEZ: I don't know. I'm not sure how --

11 MS. RANDALL: Your Honor, my guess is they will  
12 still determine the guidelines because the binding  
13 recommendation is to a term of imprisonment. So I guess they  
14 will probably still do a calculation, but determine that the  
15 binding recommendation will be the term. And there's a  
16 stipulation as to the guideline calculation in the plea  
17 agreement.

18 THE COURT: So if counsel wants me to just have that  
19 as not applies, I'll just put it not applies.

20 MR. MARTINEZ: Either way, Your Honor. You know,  
21 there's going to be a presentence investigation report. We  
22 will be interviewed by the probation office. They will issue  
23 a report. They're going to make findings pursuant to the  
24 guidelines. And to be honest with the Court, my calculations  
25 indicate that the guidelines exceed the statutory maximum

1 which is 30, which is why we have the 11(c) (1) (C) binding  
2 agreement.

3 So there will be some language about the  
4 calculations of the guidelines; however -- and I'm sure the  
5 Court will impose the sentence pursuant to a finding of maybe  
6 a level and criminal history category and sentence him to a  
7 term of imprisonment of 360 months. So either way, Your  
8 Honor.

9 MS. RANDALL: Yeah, can you read the question again.  
10 Is it just about whether a presentence report is going to be  
11 issued?

12 THE COURT: Well, it says, "Do you understand that  
13 the district judge will not be able to determine the  
14 applicable guideline range until after your presentence report  
15 has been prepared and you've had an opportunity to comment on  
16 it?"

17 MS. RANDALL: I think it's safe to go ahead and ask  
18 since the judge will have to make a determination whether to  
19 accept the plea. He'll probably rely on the presentence  
20 report to do so.

21 MR. MARTINEZ: I think it's fine to include that  
22 question, Your Honor.

23 THE COURT: Sir, all that question is asking is --  
24 and I understand your plea agreement is an agreement to a  
25 specific sentence, but what that question is asking is just do

1 you understand the procedure; that the probation officer will  
2 prepare a presentence report that will include a guideline  
3 calculation and that you and your counsel will go over that  
4 and you will have the opportunity to make objections to that  
5 and have your attorney argue that before the district judge.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: That's the procedure that I'm asking you  
8 do you understand that.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand that the Court may  
11 order restitution where applicable?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that parole has been  
14 abolished and if you're sentenced to a term of imprisonment,  
15 you will not be released on parole?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If your sentence includes imprisonment,  
18 do you understand that the district judge may also order a  
19 term of supervised release?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that if you violate  
22 the terms and conditions of supervised release, which  
23 typically last from one to five years, you could be returned  
24 to prison for an additional period of time?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand that you have a right  
2 to plead not guilty, to have a speedy trial before a judge and  
3 jury, to summon witnesses to testify in your behalf, and to  
4 confront the witnesses against you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: If you exercised your right to trial,  
7 you would be entitled to the assistance of a lawyer. You  
8 would not be required to testify. You would be presumed  
9 innocent and the burden would be on the government to prove  
10 your guilt beyond a reasonable doubt. Do you understand all  
11 of these rights?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: By entering this plea of guilty, you're  
14 waiving or giving up those rights and there will be no trial.  
15 If your guilty plea is accepted, there will be one more  
16 hearing where the district judge will determine what sentence  
17 to impose. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you, in fact, guilty of the one  
20 count in this bill of indictment?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Have the United States and the defendant  
23 entered into a plea agreement pursuant to Rule 11(c) (1) (C)?

24 MS. RANDALL: Yes, Your Honor.

25 THE COURT: You may summarize that.



1 MS. RANDALL: Thank you, Your Honor.

2 In summary, the defendant has agreed to enter a  
3 voluntary plea of guilty to Count Three as set forth in the  
4 superseding bill of indictment and admits to being, in fact,  
5 guilty as charged in Count Three of the superseding bill of  
6 indictment.

7 If the Court finds his plea to be voluntary and  
8 knowingly made and accepts the plea, the United States will  
9 move at the appropriate time to dismiss all the remaining  
10 counts as to this defendant.

11 Defendant understands that each and every provision  
12 in the plea agreement is a material term of the agreement.  
13 Each of the following would constitute a breach of the plea  
14 agreement:

15 His failure to fully comply with any provision of  
16 the plea agreement;

17 His attempt to withdraw the guilty plea; or

18 A violation of any federal, state, or local law or  
19 any order of any court, including any condition of pretrial or  
20 presentence or post-sentence release.

21 With regard to the sentence, Your Honor, because  
22 this plea is offered pursuant to Federal Rule of Criminal  
23 Procedure 11(c) (1) (C), if the Court accepts the plea  
24 agreement, the Court may not impose a greater or lesser  
25 sentence than those agreed by the parties in this plea

1 agreement. However, not all forms of punishment that have  
2 been agreed to by the parties will be binding.

3 Defendant is aware that the statutory sentence for  
4 Count Three is the same as previously gone over during this  
5 hearing.

6 This plea agreement is made pursuant to Federal Rule  
7 11(c) (1) (C) and binds the Court as to the terms set forth  
8 below in paragraph 8 only. The defendant understands that not  
9 all the terms in this plea agreement are binding  
10 recommendations that must be accepted by the Court.

11 The Court will not be bound by any provision of this  
12 agreement unless the provision explicitly states that it is  
13 binding. Unless limited by a binding recommendation, the  
14 Court may impose any punishment permitted by law.

15 The defendant and the United States, pursuant to  
16 Rule 11(c) (1) (C), make the binding recommendation that the --  
17 to the Court that the defendant be sentenced to a term of 360  
18 months' imprisonment.

19 The parties agree that they will jointly recommend  
20 that the following findings and conclusions as to the  
21 sentencing guidelines are applicable:

22 That the sentence set forth in this agreement is the  
23 appropriate disposition of the case;

24 That the recommendations set forth in this agreement  
25 will bind the Court once the Court accepts the plea agreement.

1           With regard to the guidelines, the parties have  
2 stipulated that the offense involves exploitation of two  
3 minors. Therefore, pursuant to 2G2.1(d) (1), Chapter Three,  
4 Part D (multiple counts) shall be applied as if the  
5 exploitation of each minor had been contained in a separate  
6 count of conviction resulting in two groups.

7           The base offense level for each group is 32 pursuant  
8 to Sentencing Guideline 2G2.1(a).

9           A 4-level enhancement pursuant to Sentencing  
10 Guideline 2G2.1(b) (1) (A) is applicable to each group involving  
11 child victim 1 and child victim 2 because the offense involved  
12 a minor who had not attained the age of 12 years.

13           A 2-level enhancement pursuant to Sentencing  
14 Guideline 2G2.1(b) (2) (A) is applicable to the group involving  
15 child victim 2 since the offense involved the commission of a  
16 sexual act or sexual contact.

17           A 4-level enhancement pursuant to Sentencing  
18 Guideline 2G2.1(b) (2) (B) is applicable to the group involving  
19 child victim 1 since the offense involved the commission of  
20 sex act and conduct described in 18 U.S.C. 2241(b).

21           A 4-level enhancement pursuant to Sentencing  
22 Guideline 2G2.1(b) (4) is applicable to the group involving  
23 child victim 1 because the offense involved material that  
24 portrayed sadistic or masochistic conduct or other depictions  
25 of violence.

1           A 2-level enhancement pursuant to Sentencing  
2 Guideline 2G2.1(b) (6) (B) (i) is applicable to each group since  
3 the offense involved the use of a computer or an interactive  
4 computer service to persuade, induce, entice, or coerce a  
5 minor to engage in sexually explicit conduct, or to otherwise  
6 solicit participation by a minor in such conduct.

7           The total number of units pursuant to Sentencing  
8 Guideline 3D1.4 is 1-1/2; therefore, 1 level will be added to  
9 the highest adjusted offense level to determine the combined  
10 adjusted offense level.

11           A 5-level enhancement pursuant to Sentencing  
12 Guideline 4B1.5(b) is applicable since the defendant engaged  
13 in a pattern of activity involving prohibited sexual conduct.

14           The United States agrees that if the defendant is  
15 found by the Court to have accepted responsibility under  
16 3E1.1(a), the United States will acknowledge that defendant's  
17 entry of his guilty plea is timely for the purpose of  
18 Sentencing Guideline 3E1.1(b) if that section applies to the  
19 defendant.

20           The Court may accept this agreement, reject it, or  
21 defer a decision until the Court has reviewed the presentence  
22 report. The parties agree that if the Court rejects the plea  
23 agreement or sentences the defendant to any period of  
24 imprisonment other than the term specified above, either party  
25 may vacate the plea. The Court will advise the defendant that

1 if the Court rejects the guilty plea and his plea of guilty is  
2 not withdrawn, the disposition of the case may be less  
3 favorable than that contemplated by this plea agreement.

4           The defendant has agreed to register as a sex  
5 offender. He acknowledges that he has been advised and  
6 understands the Sex Offender Registration and Notification Act  
7 and the rules regarding when and where he must register.

8           That does include (inaudible) to any financial  
9 agreements or restitution.

10           Regarding procedure, the defendant has agreed that a  
11 duly qualified federal magistrate judge may conduct the  
12 hearing required by Rule 11.

13           He stipulates that there is a factual basis as  
14 required by Rule 11 for his guilty plea.

15           He further stipulates he has read and understands  
16 the factual basis filed with this plea agreement and that such  
17 factual basis may be used by the Court, the probation office,  
18 and the United States without objection by the defendant for  
19 any purpose, including to determine the applicable advisory  
20 guideline range or appropriate sentence under  
21 18 U.S.C. 3553(a).

22           Section IV lays out a number of important waivers.  
23 Among them, the defendant is aware that the law provides  
24 certain limited rights to withdraw a plea of guilty, has  
25 discussed these rights with defense counsel, and knowingly and

1 voluntarily waives any right to withdraw his plea once the  
2 magistrate judge has accepted it.

3           The defendant has discussed with his counsel his  
4 rights pursuant to 18 U.S.C. 3742, 28 U.S.C. 2255, and similar  
5 authorities to contest the conviction and/or his sentence  
6 through an appeal or post-conviction action after entering his  
7 guilty plea; whether there are any potential issues relevant  
8 to appeal or post-conviction action; and the possible impact  
9 of any such issue on the desirability of entering into this  
10 plea agreement.

11           In exchange for concessions made by the United  
12 States in the plea agreement, the defendant waives his right  
13 to contest his conviction and his sentence in any appeal or  
14 post-conviction action. Claims of ineffective assistance of  
15 counsel and prosecutorial misconduct, and those claims only,  
16 are exempt from the waiver. This waiver precludes the  
17 defendant from challenging his conviction or sentence on the  
18 basis of any other claim, including but not limited to any  
19 claim that the statute to which he's pleading guilty is  
20 unconstitutional and any claim that the admitted conduct does  
21 not fall within the scope of that statute.

22           In conclusion, Your Honor, there are no agreements,  
23 representations or understandings between the parties in this  
24 case other than those explicitly set forth in this plea  
25 colloquy -- or as set forth in the plea agreement or as

1 noticed to the Court during the plea colloquy and contained in  
2 writing in a separate document and signed by all parties.

3 The plea agreement was signed by myself and  
4 Ms. Wasserman on behalf of the United States, Mr. Martinez,  
5 Ms. Gebre-Egziabher, and the defendant.

6 THE COURT: Do you understand those to be the terms  
7 of your plea agreement and do you agree with those terms?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Has the right to appeal your conviction  
10 and sentence been expressly waived in this plea agreement?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Has the right to challenge your  
13 conviction and sentence in a post-conviction proceeding also  
14 been waived in the plea agreement?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Is that your signature on the plea  
17 agreement?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you aware that a factual basis has  
20 been filed as an attachment to your plea agreement?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Have you read this factual basis and do  
23 you understand it and agree with it?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Has anyone threatened, intimidated, or

1 forced you to enter a guilty plea today?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Other than the terms of your plea  
4 agreement, has anyone made you any promises of leniency or a  
5 light sentence to induce you to plead guilty?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Have you had enough time to discuss with  
8 your attorneys any possible defenses you may have to this  
9 charge?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Are you satisfied with the services of  
12 your attorneys in this case?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is there anything that you would like to  
15 say at this time about the services of your attorneys?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Have you heard and understood all parts  
18 of this proceeding and do you still wish to plead guilty?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you have any questions or statements  
21 that you would like to make at this time?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Counsel, have you reviewed each of the  
24 terms of the plea agreement with him and are you satisfied  
25 that he understands those terms?



1 MR. MARTINEZ: Yes, Your Honor.

2 THE COURT: I'll submit the transcript for review  
3 and signature by counsel and the defendant.

4 (Pause.)

5 THE COURT: The Court finds the plea to be knowingly  
6 and voluntarily made. Finds a factual basis to support the  
7 plea. The plea is accepted. The Court recommends the  
8 district judge accept the plea and enter judgment thereon.  
9 Defendant has 14 days to object.

10 Did counsel want him interviewed for the presentence  
11 report?

12 MR. MARTINEZ: I'm sorry, Your Honor?

13 THE COURT: Do you want him interviewed for the  
14 presentence report?

15 MR. MARTINEZ: Yes, Your Honor.

16 THE COURT: Anything further with him?

17 MS. RANDALL: No, Your Honor. Thank you.

18 MR. MARTINEZ: No, Your Honor. Thank you.

19 THE COURT: Yes, sir.

20 (End of proceedings.)

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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Cheryl A. Nuccio, Federal Official Realtime Court  
7 Reporter, in and for the United States District Court for the  
8 Western District of North Carolina, do hereby certify that  
9 pursuant to Section 753, Title 28, United States Code, that  
10 the foregoing is a true and correct transcript of the  
11 digitally-recorded proceedings, transcribed to the best of my  
12 ability, held in the above-entitled matter and that the  
13 transcript page format is in conformance with the regulations  
14 of the Judicial Conference of the United States.  
15

16 Dated this 31st day of December 2019.  
17

18 s/Cheryl A. Nuccio

19 Cheryl A. Nuccio, RMR-CRR  
20 Official Court Reporter  
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